

AMENDED IN SENATE AUGUST 15, 2005

AMENDED IN SENATE JUNE 28, 2005

AMENDED IN SENATE JUNE 6, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1614

Introduced by Assembly Member Klehs

February 22, 2005

An act to ~~add Section 6368.11 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy; amend Sections 19521, 19734, and 19777.5 of, and to add Section 19739 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1614, as amended, Klehs. ~~Sales and use taxes: exemptions: alternative fuel passenger transit buses. Taxation: tax amnesty program: penalties.~~

Existing law requires the Franchise Tax Board to administer tax amnesty programs during the period beginning February 1, 2005, and ending on March 31, 2005, inclusive, or during any other 2-month period ending before June 30, 2005, as provided. Under existing tax laws, certain taxpayers are subject to a 50% amnesty penalty, which is an amount equal to 50% of the accrued underpayment interest payable for a specified period, if they have a balance due either on or after March 31, 2005, as provided.

This bill would eliminate the 50% amnesty penalty, as specified, if the taxpayer has filed a protective claim, as defined, and paid to the Franchise Tax Board an amount equal to at least 90% of the final

liability amount. This bill would also eliminate that penalty for any tax liability that is related to a change in case law or regulations, as provided.

This bill would also create interest equalization for taxpayers that filed protective claims, as specified, in lieu of amnesty, so that any overpayment, as defined, would bear the same interest rate that is imposed on an underpayment, as defined, and would authorize the Chief Counsel of the Franchise Tax Board, or his or her designee, to review and abate all or any portion of the amnesty penalty, as provided.

This bill would also incorporate certain changes made to Section 19777.5 of the Revenue and Taxation Code by A.B. 911, if both bills are enacted, and certain other conditions are met.

This bill would declare that it is to take effect immediately as an urgency statute.

~~The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax.~~

~~This bill would exempt from the sales and use tax tangible personal property sold or leased to a qualified person, as defined, and incorporated into alternative fuel prototype buses pursuant to a qualified research and development contract, as defined.~~

~~Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.~~

~~Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.~~

~~This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.~~

~~This bill would take effect immediately as a tax levy but its operative date would depend on its effective date.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~^{no}.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19521 of the Revenue and Taxation
2 Code is amended to read:

3 19521. (a) The rate established under this section (referred to
4 in other code sections as “the adjusted annual rate”) shall be
5 determined in accordance with Section 6621 of the Internal
6 Revenue Code, except that:

7 (1) (A) For taxpayers other than corporations, the
8 overpayment rate specified in Section 6621(a)(1) of the Internal
9 Revenue Code shall be modified to be equal to the underpayment
10 rate determined under Section 6621(a)(2) of the Internal Revenue
11 Code.

12 (B) In the case of any corporation, for purposes of determining
13 interest on overpayments for periods beginning before July 1,
14 2002, the overpayment rate specified in Section 6621(a)(1) of the
15 Internal Revenue Code shall be modified to be equal to the
16 underpayment rate determined under Section 6621(a)(2) of the
17 Internal Revenue Code.

18 (C) ~~In~~ Except as provided in Section 19734, in the case of any
19 corporation, for purposes of determining interest on
20 overpayments for periods beginning on or after July 1, 2002, the
21 overpayment rate specified in Section 6621(a)(1) of the Internal
22 Revenue Code shall be modified to be the lesser of 5 percent or
23 the bond equivalent rate of 13-week United States Treasury bills,
24 determined as follows:

25 (i) The bond equivalent rate of 13-week United States
26 Treasury bills established at the first auction held during the
27 month of January shall be utilized in determining the appropriate
28 rate for the following July 1 to December 31, inclusive. Any such
29 rate shall be rounded to the nearest full percent (or, if a multiple
30 of one-half of 1 percent, that rate shall be increased to the next
31 highest full percent).

32 (ii) The bond equivalent rate of 13-week United States
33 Treasury bills established at the first auction held during the
34 month of July shall be utilized in determining the appropriate rate
35 for the following January 1 to June 30, inclusive. Any such rate
36 shall be rounded to the nearest full percent (or, if a multiple of
37 one-half of 1 percent, that rate shall be increased to the next
38 highest full percent).

(2) The determination specified in Section 6621(b) of the Internal Revenue Code shall be modified to be determined semiannually as follows:

(A) The rate for January shall apply during the following July through December, and

(B) The rate for July shall apply during the following January through June.

(b) (1) For purposes of this part, Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), and any other provision of law referencing this method of computation, in computing the amount of any interest required to be paid by the state or by the taxpayer, or any other amount determined by reference to that amount of interest, that interest and that amount shall be compounded daily.

(2) Paragraph (1) shall not apply for purposes of computing the amount of any addition to tax under Section 19136 or 19142.

(c) Section 6621(c) of the Internal Revenue Code, relating to increase in underpayment rate for large corporate underpayments, is modified as follows:

(1) The applicable date shall be the 30th day after the earlier of either of the following:

(A) The date on which the proposed deficiency assessment is issued.

(B) The date on which the notice and demand is sent.

(2) This subdivision shall apply for purposes of determining interest for periods after December 31, 1991.

(3) Section 6621(c)(2)(B)(iii) of the Internal Revenue Code shall apply for purposes of determining interest for periods after December 31, 1998.

(d) Section 6621(d) of the Internal Revenue Code, relating to the elimination of interest on overlapping periods of tax overpayments and underpayments, shall not apply.

SEC. 2. Section 19734 of the Revenue and Taxation Code, as added by Section 11 of Chapter 226 of the Statutes of 2004, is amended to read:

19734. (a) Notwithstanding any other provision of this chapter, if any overpayment of tax shown on an original or amended return filed under this article is refunded or credited within 180 days after the return is filed, no interest shall be allowed under Section 19340 on that overpayment.

1 **(b) (1)** *In the case of any corporation, for purposes of*
2 *determining interest on overpayments attributable to payments*
3 *made on or after January 1, 2005, and before April 1, 2005, that*
4 *are not paid to satisfy an existing final liability, including final*
5 *deficiencies and self-assessed amounts, the overpayment rate*
6 *specified in Section 6621(a)(1) of the Internal Revenue Code*
7 *shall be modified to be equal to the underpayment rate specified*
8 *in Section 6621(a)(2) of the Internal Revenue Code.*

9 **(2)** *The change in the overpayment rate, as described in*
10 *paragraph (1) shall apply beginning on or after the date on*
11 *which the overpayment or overpayments specified in paragraph*
12 *(1) become effective.*

13 **SEC. 3.** *Section 19739 is added to the Revenue and Taxation*
14 *Code, to read:*

15 **19739.** *(a) Any taxpayer who makes a payment on or after*
16 *January 1, 2005, and before April 1, 2005, that is not applied to*
17 *satisfy a liability, including final deficiencies and self-assessed*
18 *amounts, for a taxable year beginning before January 1, 2003,*
19 *that was final as of March 31, 2005, may request in writing the*
20 *return of all or any portion of that payment.*

21 **(b)** *Except in a case where the Franchise Tax Board*
22 *determines that the collection of tax is in jeopardy, the Franchise*
23 *Tax Board shall return to the taxpayer the amount requested*
24 *pursuant to subdivision (a) within 45 days of receipt of the*
25 *request.*

26 **(c)** *The return of a payment to a taxpayer pursuant to this*
27 *section shall not prevent the imposition of a penalty under*
28 *paragraph (2) of subdivision (a) of Section 19777.5, relating to*
29 *penalties for amounts that become due and payable after the last*
30 *day of the amnesty period specified in Section 19731.*

31 **SEC. 4.** *Section 19777.5 of the Revenue and Taxation Code is*
32 *amended to read:*

33 **19777.5.** *(a) There shall be added to the tax for each taxable*
34 *year for which amnesty could have been requested:*

35 **(1)** *For amounts that are due and payable on the last day of the*
36 *amnesty period, an amount equal to 50 percent of the accrued*
37 *interest payable under Section 19101 for the period beginning on*
38 *the last date prescribed by law for the payment of that tax*
39 *(determined without regard to extensions) and ending on the last*
40 *day of the amnesty period specified in Section 19731.*

(2) For amounts that become due and payable after the last date of the amnesty period, an amount equal to 50 percent of the interest computed under Section 19101 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency (determined without regard to extensions) and ending on the last day of the amnesty period specified in Section 19731.

(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(c) This section does not apply to any amounts that are treated as paid during the amnesty program period under paragraph (4) of subdivision (a) of Section 19733 or paragraph (1) of subdivision (b) of Section 19733.

(d) *(1) For purposes of computing the penalty imposed under paragraph (2) of subdivision (a), the amount of interest computed under Section 19101, that would otherwise be used to compute the penalty, shall be reduced by the amount of interest attributable to any amounts that become due and payable after the last day of the amnesty period specified in Section 19731, where those additional amounts are the result of a regulation, legal ruling of counsel (within the meaning of subdivision (b) of Section 11340.9 of the Government Code), or a published federal or California court decision that becomes final after the last day of the amnesty period specified in Section 19731 that is applicable for a taxable year beginning before January 1, 2003.*

(2) The Franchise Tax Board shall implement this section in a reasonable manner.

(e) The penalty imposed by paragraph (2) of subdivision (a) of this section does not apply if the taxpayer paid, on or before the last day of the amnesty period specified in Section 19731, at least 90 percent of the total tax for a taxable year. Total tax includes any amounts that become due and payable after the last day of the amnesty period.

(f) Article 3 (commencing with Section 19031), ~~(relating to deficiency assessments)~~ assessments, shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

~~(e)~~

1 (g) (1) Notwithstanding Chapter 6 (commencing with Section
2 19301), a taxpayer may not file a claim for refund or credit for
3 any amounts paid in connection with the penalty imposed in
4 subdivision (a), *except as provided in paragraph (2).*

5 (2) *A taxpayer may file a claim for refund for amounts paid to*
6 *satisfy the penalty imposed under subdivision (a) on the grounds*
7 *that the failure of the Chief Counsel of the Franchise Tax Board,*
8 *or his or her designee, to abate the penalty, in whole or in part,*
9 *under the authority of subdivision (h) was an abuse of discretion.*

10 (h) *Only the Chief Counsel of the Franchise Tax Board, or his*
11 *or her designee, may abate all or any portion of a penalty*
12 *imposed under subdivision (a) if any one or more of the following*
13 *applies:*

14 (1) *The taxpayer demonstrates that the underpayment upon*
15 *which the penalty was based, or a portion thereof, was*
16 *attributable to the treatment of an item for which there was*
17 *substantial authority, within the meaning of Section 6662 of the*
18 *Internal Revenue Code and the regulations thereunder.*

19 (2) *The penalty imposed under this section, or a portion*
20 *thereof, is based on an underpayment resulting from a change or*
21 *correction by the Commissioner of Internal Revenue or other*
22 *officer of the United States and the taxpayer was first contacted*
23 *by the Internal Revenue Service concerning an examination of*
24 *the return after the last day of the amnesty period specified in*
25 *Section 19731.*

26 (3) *If taking into account all the facts and circumstances, it is*
27 *against equity and good conscience to hold the taxpayer liable*
28 *for the penalty imposed under this section, or any portion*
29 *thereof.*

30 (i) *The State Board of Equalization's determination on an*
31 *appeal from the action of the Franchise Tax Board on a claim for*
32 *refund filed pursuant to paragraph (2) of subdivision (g) shall be*
33 *limited to whether the failure of the Chief Counsel of the*
34 *Franchise Tax Board, or his or her designee, to abate all or any*
35 *portion of the penalty imposed under this section was an abuse of*
36 *discretion.*

37 SEC. 4.5. *Section 19777.5 of the Revenue and Taxation Code*
38 *is amended to read:*

39 19777.5. (a) *There shall be added to the tax for each taxable*
40 *year for which amnesty could have been requested:*

(1) For amounts that are due and payable on the last day of the amnesty period, an amount equal to 50 percent of the accrued interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the last day of the amnesty period specified in Section 19731.

(2) For amounts that become due and payable after the last date of the amnesty period, an amount equal to 50 percent of the interest computed under Section 19101 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency (determined without regard to extensions) and ending on the last day of the amnesty period specified in Section 19731.

(3) For purposes of paragraph (2), Sections 19107, 19108, 19110, and 19113 shall apply in determining the amount computed under Section 19101.

(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(c) This section does not apply to any amounts that are treated as paid during the amnesty program period under paragraph (4) of subdivision (a) of Section 19733 or paragraph (1) of subdivision (b) of Section 19733.

(d) (1) For purposes of computing the penalty imposed under paragraph (2) of subdivision (a), the amount of interest computed under Section 19101, that would otherwise be used to compute the penalty, shall be reduced by the amount of interest attributable to any amounts that become due and payable after the last day of the amnesty period specified in Section 19731, where those additional amounts are the result of a regulation, legal ruling of counsel, within the meaning of subdivision (b) of Section 11340.9 of the Government Code, or a published federal or California court decision that becomes final after the last day of the amnesty period specified in Section 19731 that is applicable for a taxable year beginning before January 1, 2003.

(2) The Franchise Tax Board shall implement this section in a reasonable manner.

(e) The penalty imposed by paragraph (2) of subdivision (a) of this section does not apply if the taxpayer paid, on or before the

1 *last day of the amnesty period specified in Section 19731, at least*
2 *90 percent of the total tax for a taxable year. Total tax includes*
3 *any amounts that become due and payable after the last day of*
4 *the amnesty period.*

5 *(f) Article 3 (commencing with Section 19031),—(relating*
6 *relating to deficiency—assessments) assessments, shall not apply*
7 *with respect to the assessment or collection of any penalty*
8 *imposed by subdivision (a).*

9 *(e)*
10 *(g) (1) Notwithstanding Chapter 6 (commencing with Section*
11 *19301), a taxpayer may not file a claim for refund or credit for*
12 *any amounts paid in connection with the penalty imposed in*
13 *subdivision (a), except as provided in paragraph (2).*

14 *(2) A taxpayer may file a claim for refund for amounts paid to*
15 *satisfy the penalty imposed under subdivision (a) on the grounds*
16 *that the failure of the Chief Counsel of the Franchise Tax Board,*
17 *or his or her designee, to abate the penalty, in whole or in part,*
18 *under the authority of subdivision (h) was an abuse of discretion.*

19 *(h) Only the Chief Counsel of the Franchise Tax Board, or his*
20 *or her designee, may abate all or any portion of a penalty*
21 *imposed under subdivision (a) if any one or more of the following*
22 *applies:*

23 *(1) The taxpayer demonstrates that the underpayment upon*
24 *which the penalty was based, or a portion thereof, was*
25 *attributable to the treatment of an item for which there was*
26 *substantial authority, within the meaning of Section 6662 of the*
27 *Internal Revenue Code and the regulations thereunder.*

28 *(2) The penalty imposed under this section, or a portion*
29 *thereof, is based on an underpayment resulting from a change or*
30 *correction by the Commissioner of Internal Revenue or other*
31 *officer of the United States and the taxpayer was first contacted*
32 *by the Internal Revenue Service concerning an examination of*
33 *the return after the last day of the amnesty period specified in*
34 *Section 19731.*

35 *(3) If taking into account all the facts and circumstances, it is*
36 *against equity and good conscience to hold the taxpayer liable*
37 *for the penalty imposed under this section (or any portion*
38 *thereof).*

39 *(i) The State Board of Equalization's determination on an*
40 *appeal from the action of the Franchise Tax Board on a claim for*

1 refund filed pursuant to paragraph (2) of subdivision (g) shall be
2 limited to whether the failure of the Chief Counsel of the
3 Franchise Tax Board, or his or her designee, to abate all or any
4 portion of the penalty imposed under this section was an abuse of
5 discretion.

6 (j) Notwithstanding Section 18415, the amendments made to
7 this section by the act adding this subdivision shall apply to
8 penalties imposed under paragraph (2) of subdivision (a) after
9 March 31, 2005.

10 SEC. 5. Section 4.5 of this bill incorporates amendments to
11 Section 19777.5 of the Revenue and Taxation Code proposed by
12 this bill and AB 911, as amended June 20, 2005. It shall only
13 become operative if (1) both bills are enacted and become
14 effective on or before January 1, 2005, (2) each bill amends
15 Section 19777.5 of the Revenue and Taxation Code, and (3) this
16 bill is enacted after AB 911, in which case Section 4 of this bill
17 shall not become operative.

18 SEC. 6. This act is an urgency statute necessary for the
19 immediate preservation of the public peace, health, or safety
20 within the meaning of Article IV of the Constitution and shall go
21 into immediate effect. The facts constituting the necessity are:

22 To prevent taxpayers from being unfairly penalized under the
23 amnesty program, it is necessary that this act take effect
24 immediately.

25 ~~SECTION 1. Section 6368.11 is added to the Revenue and~~
26 ~~Taxation Code, to read:~~

27 ~~6368.11. (a) There are exempted from the taxes imposed by~~
28 ~~this part, the gross receipts from the sale in this state of, and the~~
29 ~~storage, use, or other consumption in this state of, qualified~~
30 ~~equipment sold or leased to a qualified person.~~

31 ~~(b) For the purposes of this section:~~

32 ~~(1) "Qualified equipment" means tangible personal property~~
33 ~~that is incorporated into alternative fuel prototype buses pursuant~~
34 ~~to a qualified research and development contract.~~

35 ~~(2) "Qualified person" means a contractor who provides~~
36 ~~integration and installation of fuel cell components for a public~~
37 ~~transportation agency that is a member of the California Fuel~~
38 ~~Cell Partnership and has a demonstration program.~~

39 ~~(3) "Qualified research and development contract" means a~~
40 ~~contract for services related to the development of alternative~~

1 ~~fuel prototype buses when the service provided under the~~
2 ~~contract is undertaken for the purpose of discovering information~~
3 ~~that is technological in nature and intended to be useful in the~~
4 ~~development of a new or improved product, process, technique,~~
5 ~~or invention.~~

6 ~~SEC. 2. Notwithstanding Section 2230 of the Revenue and~~
7 ~~Taxation Code, no appropriation is made by this act and the state~~
8 ~~shall not reimburse any local agency for any sales and use tax~~
9 ~~revenues lost by it under this act.~~

10 ~~SEC. 3. This act provides for a tax levy within the meaning~~
11 ~~of Article IV of the Constitution and shall go into immediate~~
12 ~~effect. However, the provisions of this act shall become operative~~
13 ~~on the first day of the first calendar quarter commencing more~~
14 ~~than 90 days after the effective date of this act.~~